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## RESOURCES

### Milwaukee County, Wisconsin:

Danielle Basil Long, Project Director  
(414) 278-3985  
[danielle.long@wicourts.gov](mailto:danielle.long@wicourts.gov)  
Alternate Contact:  
Office of the Chief Judge,  
(414) 278-5116

### Office on Violence Against Women:

Darlene Johnson, Assistant Director  
(202) 307-6795  
[darlene.johnson@usdoj.gov](mailto:darlene.johnson@usdoj.gov)

### National Institute of Justice:

Angela Moore Parmley, Chief  
Violence and Victimization Research Division  
(202) 307-0145  
[angela.moore.parmley@usdoj.gov](mailto:angela.moore.parmley@usdoj.gov)

### Urban Institute:

Adele Harrell, Principal Research Associate  
(202) 261-5738  
[aharrell@ui.urban.org](mailto:aharrell@ui.urban.org)

### Vera Institute of Justice:

Nancy Cline, Project Director  
Technical Assistance and Training  
(212) 376-3041  
[ncline@vera.org](mailto:ncline@vera.org)

For general information on violence against women programs, visit the Office on Violence Against Women's web site at [www.usdoj.gov/ovw](http://www.usdoj.gov/ovw).

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## ENHANCING RESPONSES TO DOMESTIC VIOLENCE

PROMISING  
PRACTICES FROM  
THE JUDICIAL  
OVERSIGHT  
DEMONSTRATION  
INITIATIVE

# Pretrial Innovations: Supporting Safety and Case Integrity



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### **Milwaukee County Judicial Oversight Demonstration Initiative**

Danielle Basil Long, Project Director, Judicial Oversight Demonstration Initiative

Terry Batson, Former Evaluator

Dennis Cook, Commissioner, Domestic Violence Commissioner's Court

Paul Dedinsky, Assistant District Attorney, Milwaukee County District Attorney's Office

Terese Dick, Deputy First Assistant, State Public Defender's Office of Wisconsin

Jessica Strand, Victim/Witness Specialist, Milwaukee County District Attorney's Office

Michael Sullivan, Former Chief Judge, Milwaukee County Circuit Court

Jacqueline Thachenkary, Associate Director, Judicial Oversight Demonstration Initiative

Joseph Wohltz, Bail Monitor, Pretrial Monitoring Program Milwaukee County Court Staff and Administrators

### **Publication Consultants:**

Pamela Fenwick, Fenwick Design, Inc.

Mary Jo Walicki, Photographer

### **Vera Institute of Justice:**

Robin Campbell, Communications Manager

Nancy Cline, Director of Technical Assistance, Judicial Oversight Demonstration Initiative

Patrick Kelly, Editor

Cristina Damiani, Project Analyst

Katherine Potaski, Project Assistant

# Pretrial Innovations in Milwaukee County, Wisconsin

The time between when an accused batterer is arrested and when the case is resolved can be especially dangerous for a victim of domestic violence. During this period, the criminal justice system's legal control over defendants is limited; except under extreme circumstances, defendants are usually quickly released on bail. Yet this is also the time when an accused batterer is most likely to try to influence the outcome of the case, sometimes using threats and violence. The risk may be even higher if the defendant sees the case as evidence that the alleged victim is trying to leave the relationship. Studies show that half of all murders of wives by husbands take place within two months of a separation—far less time than the four to 14 months it usually takes for criminal cases to be resolved.

This report describes the Domestic Violence Commissioner's Court (DVCC), the Pretrial Monitoring Program (PMP), and the Victim and Children's Waiting Room, three innovations that Milwaukee County, Wisconsin, implemented to improve the way domestic violence cases are processed, ensure that defendants in such cases adhere to the conditions of their bail, and reduce alleged victims' risk of violence and intimidation. The report was written to provide practitioners and policymakers with information about how these innovations might be adapted for their own jurisdictions.<sup>1</sup> It begins with an overview and short introduction to the innovations' benefits and challenges, followed by a sequential account of how the innovations operate together. The report concludes with a discussion of the benefits, challenges, and considerations associated with each innovation, drawing on the impressions of the people involved, and concludes with references for those seeking additional information.

## *The Judicial Oversight Demonstration Initiative*

In 1999, three jurisdictions—Dorchester District in Boston, Massachusetts; Milwaukee County, Wisconsin; and Washtenaw County, Michigan—embarked on an ambitious effort to improve criminal justice and community responses to domestic violence. The Judicial Oversight Demonstration (JOD) Initiative, funded by the U.S. Department of Justice's Office on Violence Against Women and managed by the Vera Institute of Justice, brought together in each site judges and defense attorneys and prosecutors, advocates for women and batterer intervention specialists, probation agents, police, and others to develop new ways to enhance victim safety and the oversight of offenders in their communities.

Five years later, each jurisdiction's efforts reflect their particular local circumstances and needs. This report is a part of a series that explores the innovations in Dorchester, Milwaukee, and Washtenaw so that other jurisdictions can learn from their experience.

For more information about the Judicial Oversight Demonstration Initiative, or to view other publications in the Enhancing Responses to Domestic Violence series, visit [www.vera.org/jod](http://www.vera.org/jod).

## **Milwaukee County's Strategies to Address Domestic Violence**

Milwaukee County, Wisconsin, is a midsize jurisdiction of some 900,000 residents (590,000 within the City of Milwaukee) that has long been a leader in responding to domestic violence. In 1989, the State of Wisconsin became one of the first states to

<sup>1</sup> An independent evaluation is currently under way by the Urban Institute in Washington, DC. Outcome results are expected to be released some time in early 2006.

pass mandatory arrest laws. In 1994, the Milwaukee County Circuit Court established the first of what would eventually become three misdemeanor courts dedicated solely to handling domestic violence crimes, and soon after the Milwaukee County District Attorney's Office adopted "no-drop" prosecution strategies that move cases forward based on the level of evidence rather than relying solely on victims' willingness to testify. Currently, the district attorney's Domestic Violence Unit reviews roughly 7,500 misdemeanor cases each year, leading to formal charges in approximately 3,000 cases.<sup>2</sup> Like many jurisdictions, Milwaukee County also has a number of victim/witness specialists in the district attorney's office who provide victims with information about the criminal justice process, help assess their particular needs for support, and provide them with links to appropriate community agencies.<sup>3</sup>

These developments helped set the stage for the three pretrial innovations discussed below, which were initiated as part of the federally funded Judicial Oversight Demonstration Initiative (see box on the Judicial Oversight Demonstration Initiative on page 1).

**Domestic Violence Commissioner's Court.** The Domestic Violence Commissioner's Court (DVCC), instituted in September 2000, is a specialized court session that consolidates most pretrial proceedings involving misdemeanor domestic violence cases. The DVCC is presided over by a commissioner, not a judge, and its activities include conducting initial appearances and arraignments; setting the terms and conditions of bail; issuing no-contact orders; accepting guilty pleas; and addressing third party visitation when children are involved. "If I were not processing these cases in the DVCC, they would have to be processing them in other domestic violence trial courts," explains Commissioner Dennis Cook, who says that by handling up to 35 cases each weekday morning, the DVCC leaves the county's three, full-time domestic violence courts more time to conduct trials, sentencing hearings, and probation review hearings, and to focus on felony cases.<sup>4</sup> Because commissioners in Wisconsin can accept guilty pleas, the session is also expected to see cases resolved more quickly. This is a critical factor in intimate partner violence cases, where the longer the case takes to process, the greater the likelihood that a victim will give up on the system's ability to intervene effectively.

**Pretrial Monitoring Program.** The DVCC session became the foundation for the creation of the Pretrial Monitoring Program (PMP) in 2002. The PMP is reserved exclusively for defendants with a previous domestic violence charge and who are not under the supervision of a probation or parole agent at the time of the new charge. Defendants are monitored by a designated bail monitor who is familiar with the tactics of those who use violence against intimate partners. Defendants are also required to appear before the commissioner at least three times during the pretrial phase of the case.<sup>5</sup> "There are two factors that the program is designed to track," explains Commissioner Cook. "One is the victim safety factor;

<sup>2</sup> Accused persons may have more than one case or charge.

<sup>3</sup> The Milwaukee County District Attorney's Office has also donated office space to a local nonprofit victim advocacy organization (Sojourner Truth House) so that victims can access confidential advocacy services inside the court complex.

<sup>4</sup> Probation review hearings (also known as judicial review hearings) are mandated post-conviction check-in sessions held by the sentencing judge to ensure that probationers are complying with all court ordered conditions. To learn more, visit [www.vera.org/jod](http://www.vera.org/jod).

<sup>5</sup> Cases assigned to the PMP constitute about three percent of all cases that come before the DVCC—due in part to established program criteria and caseload limitations resulting from budget constraints.



*"There's two factors to track: victim safety and the defendant's attempts to influence the victim's testimony."  
Commissioner  
Dennis Cook*

the other is the defendants' opportunity to influence, directly or indirectly, what the outcome of the case is going to be or what the testimony of the victim will be." "One of the key ways to prevent defendants from persuading victims to change their testimony," explains Danielle Basil Long, Milwaukee's Project Director, "is by closely monitoring the conditions of bail, especially the no-contact order."

The bail monitor serves as a liaison between the DVCC and relevant stakeholders—the accused, the alleged victim, and representatives of the justice system and nonprofit organizations—until the case is fully disposed. During this time, the bail monitor will conduct at least three scheduled face-to-face office visits with the defendant and conduct random visits to the defendant's listed address to help verify that no-contact orders and other conditions of bail are being met.

<sup>6</sup> No-contact orders are "system" initiated orders in criminal cases and are different from civil protection orders, which are initiated by the victim (or plaintiff). The latter can be sought regardless of any pending criminal case. The former is sought as a result of a pending criminal justice action.

<sup>7</sup> Exceptions are usually only granted when related to third-party visitation with children. The victim must appear before the commissioner to make a formal request for such an amendment. This allows the court to assess whether the party requesting the change has been coerced into making the request.

## *Challenges Associated with No-Contact Orders in Domestic Violence Cases*

One of the most common ways that the criminal justice system seeks to protect alleged victims and witnesses is by issuing no-contact orders that require defendants to stay away from those they are accused of harming. Usually initiated as a condition of bail, no-contact orders remain active throughout the entire pretrial phase of a case and may be extended if necessary.<sup>6</sup>

When a crime is committed against a stranger, a no-contact order is usually sufficient to keep the offending party at bay. But for crimes committed against an intimate partner, these orders surface complex issues. Often, the alleged victim and defendant have been living together at the time of the arrest; they may share resources and assets or have children and families in common, making full and immediate separation challenging. For some victims, there is also a risk of what is known as "separation violence"—an increase in physical danger occurring after attempts to separate from an abuser—a serious factor for the safety of these victims, which requires increased vigilance by those who are intervening on the victim's behalf.

Many professionals also feel conflicted about issuing blanket no-contact orders because in some cases, they are ruling against the apparent, expressed wishes of the victim. Milwaukee has found no exception, explains Commissioner Cook as he describes the dilemma he faces almost daily in the DVCC where he issues and rules on such orders. "The hardest part of this job," he says, "is knowing which victim is here [asking for changes to the order] because they really want me to change the conditions or who is here because they are scared and are saying what the defendant told them to say."

Because the stakes are so high, the judges and commissioners in Milwaukee have a policy of rarely, if ever, changing no-contact orders during the pretrial phase of the case.<sup>7</sup> Instead, they rely on victim/witness specialists, the bail monitor, and nonprofit advocates to help victims manage the consequences of the separation by explaining that it is temporary, lasting only until the case is resolved and the system has reason to believe that the violence is being addressed. This practice has the added benefit of allowing some victims to legitimately tell the defendant that the court—not the victim—is the one ordering no contact. This has helped some victims break the ties that bind them to abusive relationships. One recent victim who participated in the PMP said the order helped her end an abusive marriage after 26 years. "I called 911 many, many, times," she says, "but this time was different because there was a no-contact order."

## *Involving the Defense Bar*

While the defense bar should play a role in planning and developing any new criminal justice program, their involvement is especially important for practices that apply to the pretrial phase of a criminal case. According to Terese Dick, Deputy First Assistant for the State Public Defender's Office of Wisconsin, when court officials began planning the Domestic Violence Court Commissioner's session and the Pretrial Monitor Program, they made sure to include representatives of the defense bar in the process. "We were invited from day one. It was great being involved in planning the structure, the process, how it would look, and how the hearings would be held."

Such early involvement can preempt legal challenges and help ensure the overall integrity of the project by seeing that the rights and needs of the accused are adequately represented. It does not guarantee that defense attorneys will enjoy all of the results, however. For example, Dick is uncomfortable with many aspects of both innovations. "I think the monitoring is a great resource for victims to have, but it is a huge burden on our clients," she says. The DVCC presents practical challenges as well. "It meant another court we had to be in, which is always difficult. In our work we are not assigned to a particular court or two like the district attorneys are. We are going through all the misdemeanor divisions and there are 10 judges. So it added another place where we needed to be."

Dick also explains that over the years she has had to do a lot of training with her colleagues who sometimes view participation in this type of planning as a conflict of interest. Through experience, Dick knows that her participation and that of her peers is in her clients' best interest: "Being at the table not only assures that defendants' rights are considered, it also helps me understand what these programs mean for my client." Because of her involvement she knows to stress to her clients that bail violations weaken bargaining power and may lead to new and more serious charges and that these violations may also be admissible evidence should the case go to trial. Unlike some in her profession, Dick would argue that promoting victim safety is not only good for victims but that not promoting safety is actually detrimental to her clients.

Concurrently, the monitor attempts to contact all victims by letter and phone. When these attempts are unsuccessful, the monitor conducts a field "welfare check" to the victim's listed residence to assess the victim's feelings of safety and to ensure that the defendant is not harassing the victim or keeping the victim from seeking help.<sup>8</sup> Contact with the victim also allows the monitor to offer support and referrals for advocacy services and helps ensure that victims understand the court processes and the terms and conditions of no-contact orders.<sup>9</sup> "What I really like about this program is that one person is in contact with both parties and you get the whole picture. That is one big advantage," says Bail Monitor Joseph Wohltz.

Should any violations be discovered in this process, the commissioner may modify bail. In some cases, the commissioner will instruct the assistant district attorney to investigate these alleged violations, which may in turn lead the district attorney's office to seek new charges for bail jumping or witness tampering.<sup>10</sup>

### **Victim and Children's Waiting Room.**

A separate waiting room for victims and their children inside the Milwaukee County Courthouse was created in 2000. The waiting room, which is located on the same floor as the domestic violence courts, is a comfortable, semiprivate place where victims and children can wait for their case to be called. The space was provided by the chief judge, and construction, furnishings, toys, and decorations were contributed by private

<sup>8</sup> After the first welfare check, all follow-up visits with the victim are done on a voluntary basis. Special care must be taken not to put the victim at greater risk of danger from the defendant who may threaten or injure a victim for cooperating with the criminal prosecution of the underlying case. Clear procedures should be in place before implementing welfare checks.

<sup>9</sup> In Milwaukee County, no-contact orders are routinely issued as condition of bail in criminal cases involving domestic violence. The prosecutor mails a copy of the order to the victim. The monitor will review the order with the victim if contact is successful.

<sup>10</sup> This issue will be addressed in greater detail in *Prosecuting Witness Tampering, Bail Jumping, and Battering From Behind Bars* (part of the Enhancing Responses to Domestic Violence series), which can be downloaded from [www.vera.org/jod](http://www.vera.org/jod). It is only cursorily addressed in this paper.

donors and volunteer efforts.<sup>11</sup> Prior to the creation of the waiting room, “it was really hard to tell victims, ‘Just go to court and wait for us,’” says Victim/Witness Specialist Jessica Strand. “We would have victims who would leave the courtroom and run into defendants in the hallway, and defendants would tell the victim that they had to leave. They would basically run the victim out of the courthouse.” Now specialists can meet victims in the waiting room instead of the public areas of the court. Since witnesses are subpoenaed to appear in court, the district attorney’s office has changed its policy for victims of domestic violence. Victims are now subpoenaed to the waiting room instead of the courtroom so that there are fewer chances for them to be harassed in the public areas of the courthouse.<sup>12</sup>

Individually and combined, the DVCC, PMP, and Victim and Children’s Waiting Room yield a number of benefits. Broadly stated, these include a more streamlined pretrial process, better compliance with conditions of bail in some cases, and a strengthening of the validity of no-contact orders by actively addressing violations that occur both inside and outside of court. However, the innovations also present a number of challenges. For example, creating a pretrial system that includes enhanced supervision for defendants requires special attention to due process issues and the active participation of the defense bar (see box on Involving the Defense Bar on page 4); some victim advocates worry that indiscriminately issuing blanket no-contact orders may have unintentional negative consequences for some victims; and the additional resources required to actively monitor compliance with conditions of bail can present challenges for implementation.

Because a substantive discussion of these issues must be grounded in a thorough understanding of the innovations, a more comprehensive discussion of the benefits, challenges, and considerations has been reserved until after the following detailed description of how cases move through the system.

## How Cases Move Through the System

Each of the three innovations in this report was undertaken independently. Nevertheless, they are interconnected. This section discusses how cases move through the system with an emphasis on the DVCC and PMP. Because the function of the waiting room is self-evident, it is mentioned only in passing.

### Arrest, Prosecution, and Intake

When someone is arrested for a misdemeanor crime committed against an intimate partner or family member, the Milwaukee County District Attorney (DA) routes the case to the Domestic Violence Unit for charging decisions. Advocates from Sojourner Truth House, a nonprofit victim services agency stationed in the DA’s office, immediately engage the victims while the lawyers begin work on the legal aspects of the case. Usually within two weeks of charges being sought, a victim/witness specialist working for the DA will contact the victim to explain court procedures, assess their needs, and make referrals to local service providers. They offer to

<sup>11</sup> Local contributors include the Junior League of Milwaukee, Peabody Interiors, and the University School.

<sup>12</sup> While all victims are subpoenaed, the subpoenas do not contain body attachments that would forcibly require the victims to appear. Forcible appearances are considered dangerous practice in domestic violence cases.



*Prior to the creation of the waiting room, “defendants would basically run the victims out of the courthouse.”*  
— Victim/Witness Specialist Jessica Strand



*A separate waiting room inside the Milwaukee County Courthouse provides a safe place for victims and their children.*

accompany victims to court hearings and appearances, provide support during all domestic violence court sessions, and help staff the Victim and Children's Waiting Room. If a case gets charged, it is assigned to a domestic violence court. If the accused person is in custody at the time of the first appearance, the case will begin in the In-Custody Intake Court and then be assigned to the Domestic Violence Court Commissioner's session for all subsequent pretrial appearances. If the person is not in custody at the time of the first court appearance, the case will go straight to the DVCC where all subsequent hearings will be held until the case is pled, dismissed, or goes to trial.

The Pretrial Monitoring Program has three primary referral sources: the In-Custody Intake Court, the DVCC, and the Domestic Violence Unit in the district attorney's office. Qualifying in-custody cases are assigned to the PMP as a condition of bail in the Intake Court, and defendants must report to the bail monitor within 24 hours of their release. For qualifying out-of-custody cases, the DVCC can add the PMP as a condition of bail, sending the defendant directly to the bail monitor's office for immediate intake or to schedule an intake appointment. Finally, the assistant district attorneys in the Domestic Violence Unit can also request that specific cases be assigned to the PMP.

The bail monitor uses the intake interview to help defendants understand the PMP procedures and review all conditions of bail, paying special attention to the no-contact order and the consequences of violating the order. In going over the conditions, the monitor explains that police will accompany him or her during field compliance checks and that any violations they discover can result in immediate arrest.<sup>13</sup> If the commissioner orders absolute sobriety as a condition of bail, the monitor conducts random breathalyzer tests for alcohol use and, if needed, arranges for urine screenings to test for other drugs.<sup>14</sup> Before the intake meeting is complete, the monitor will photograph the defendant in order to have a picture on file to assist with identification during field compliance checks. Should the need become evident, the monitor may also offer information regarding community-based social services.<sup>15</sup>

When conducting intakes the bail monitor stresses that his fundamental role is to ensure that conditions of bail are followed. "We explain that we are not here to talk about the [underlying case], that we are officers of the court; we are here to enforce a no-contact order and other conditions of bail," says Bail Monitor Joseph Wohltz. Because anything defendants say to the monitor can be used against them in court, defendants are made aware of their right not to make incriminating statements and are asked to sign an acknowledgement that they received notice of this right before each office visit.



*"We explain that we are not here to talk about the case; we are here to enforce a no-contact order and other conditions of bail."  
— Bail Monitor Joseph Wohltz*

<sup>13</sup> The City of Milwaukee and the West Allis Police Departments accompany the bail monitor on all field visits. This helps assure the safety of the monitor, helps some victims feel more secure knowing that police are staying actively involved, and allows for immediate arrest if the defendant is caught violating bail.

<sup>14</sup> Urinalysis is available because of a cooperative agreement with Wisconsin Community Services (a local nonprofit pretrial organization). The results of these tests may also be shared with other pretrial agencies, including the In-Home Detention and Electronic Monitoring Program, Mental Health Intervention Unit, and Alcohol and Other Drug Abuse Program.

<sup>15</sup> Referrals made by the monitor are usually social or health related referrals, and participation is voluntary unless the referral is directly related to a condition of bail.

## Bail Monitor's Role with Victims

Because a key goal of the program is to help keep victims safe, the bail monitor attempts to contact each alleged victim connected to PMP cases. A copy of the police report or information provided by the DA's office usually provides the necessary contact information—although many victims move or go underground as a result of the violence, some fear the criminal justice process, and some are too poor to have consistent phone service. According to Terry Batson, the Milwaukee Program Evaluator, the bail monitor has successfully contacted 69 percent of the victims—"a high number given the complex nature of domestic violence cases," she says. Also cited as a reason for the monitor's successful rate of contact with victims is that first contact is initiated within 24 hours of a defendant's intake interview. "The timing of this contact is critical to keeping the victim engaged. We like to get to the victim before the defendant does," explains Milwaukee JOD Associate Director Jacqueline Thachenkary, supervisor of the Pretrial Monitoring Program. "Doing the contact at intake also helps fill a two-week gap that used to exist between intake and charging [a time in which victim/witness staff are yet to be assigned to the case]," she says.

Because all victim participation in the PMP is voluntary, one of the monitor's first jobs with alleged victims is to ascertain whether they want further contact. Many victims are more likely to consent when they learn that the monitor is an officer of the court and not directly working for the prosecution or the police. Still, the monitor must be clear that their communication is not confidential—the monitor must report any bail violations to the DVCC, which will likely result in some form of sanction by the court.

As a part of the victim intake interview, the monitor collects their emergency contact information in case they need to be warned of threats or changes to the defendant's status in the program. The monitor also assesses the nature of the couple's relationship, whether they have children in common, if there are existing civil or family court orders for protection and the statuses of those orders, and whether the defendant has any unreported firearms or other dangerous weapons. The monitor will also encourage victims to contact the police if violations of the order occur.

As in the intake meeting with the defendant, during the initial contact with victims, the monitor will once again explain the court processes and the terms

### *Field and Home Visits: Impact on Victim Safety*

While welfare checks with victims are believed to make them safer, they can also place an additional burden on families already bearing the stress of domestic violence. "I've had victims call me up after a home visit and say, 'Thank you. That was really nice,'" says Bail Monitor Joseph Wohltz. "And on one or two occasions victims have said, 'Don't ever do that again!'"

To minimize the burden on families, the bail monitor works with representatives of nonprofit organizations to help victims address some of the practical and emotional consequences of the judicial action, such as the practical consequences of the no-contact orders—the need for additional childcare, for example; a sense of being lost or powerless in the process; or fear of retaliation from defendants who may blame the victims for the actions of the state. The monitor must also consider whether contacting the victim or using information from this contact in court may jeopardize the victim's safety. After all, besides the defendant, the defendant's family members, friends, and neighbors may also pose a threat.

In light of considerations such as these, the selection and training of bail monitors is critically important.

and conditions of the defendant's bail including the no-contact order (see box on No-Contact Orders on page 3) . The monitor also offers referrals to services, offers to accompany victims to court hearings or trials, and explains the monitor's role as a liaison with the court should problems arise.

Finally, the monitor also conducts phone, mail, and field "welfare checks."<sup>16</sup> These out-of-court contacts require caution and creativity to carry out, however, because victims risk retaliation from defendants. On one occasion, for example, Wohltz telephoned a victim who used a previously agreed-upon code word to signal that the defendant was in her home in violation of a court order. "I was going to say, 'This is a voter registration drive. I am taking a poll. Did you vote today?'" he recalls, explaining that it was an election day. "She said 'Yes, I voted over at the local high school.' Recognizing the code, I immediately called 911 and the police responded and made an arrest."

### Processing and Consequences of Violations

Violations of bail can be discovered in a number of ways. As mentioned above, violations discovered through field monitoring of the defendant or by welfare checks with victims can result in an immediate arrest by the police. An arrest triggers a police report that is forwarded to the district attorney's office who then decides if new charges should be filed. The bail monitor writes and submits a memo to the DVCC staff, who will arrange for a hearing to take place within 48 hours. When a violation discovered during a field visit does not result in an immediate arrest—because the defendant has fled or was not present when the violation was reported—the monitor still writes a report on the incident.

Violations may also be discovered through self-report from the defendant or through communications with the victim. A victim who reports a violation to the monitor or the specialist is also encouraged to call the police and file a formal police report. (Having a police report helps build a chain of evidence that can be used to take action to help protect the victim and to address the reported violation.) If a police report is not written, the bail monitor can trigger court action by writing a detailed memo requesting an immediate hearing.<sup>17</sup> The memo is submitted to the court clerk who forwards it to the commissioner, the prosecutor assigned to the court, and the defendant's attorney.<sup>18</sup> Because filing these reports can be a risk factor for victims, the bail monitor, the victim/witness specialist, and/or a nonprofit advocate also work with them continually to adjust their safety plans accordingly. The commissioner then schedules a review hearing and the court notifies the defendant. If the defendant fails to appear, a bench warrant is issued.<sup>19</sup>

During the hearing, the commissioner weighs the content of the report against arguments presented by the defense and the prosecution, which may include

<sup>16</sup> A "field" or "out-of-court" check on the welfare of a victim is conducted when contact by phone or mail is unsuccessful, when there is information that a bail violation has occurred, or when the monitor has immediate concerns about the safety of a victim.

<sup>17</sup> Because there are 19 different police agencies within the county, police responses to victim reports of violations vary. When a call fails to result in a police report, victims are directed to contact sergeants. As a backup measure, the monitor can also write a memo to the court, which can trigger action on the alleged bail violation.

<sup>18</sup> For legal and ethical reasons, all reports of violations must be submitted in writing. The commissioner limits oral communications with the monitor outside of formal court hearings.

<sup>19</sup> Because bail violations may occur after the case has moved to the trial courts, the monitor's report may also be forwarded to the trial judge who will take similar action.



*Hearings on bail violations may include testimony from victims or witnesses.*

testimony from the victim or witnesses. Depending on the nature of the allegations, the commissioner may respond in a range of ways, from issuing a verbal warning to increasing bail—which can sometimes affect the defendant’s ability to remain out of custody.<sup>20</sup> According to Victim/Witness Specialist Jessica Strand, the commissioner’s actions vary according to the nature of the violation: “If a guy violates a no-contact order by calling once and hanging up, he’s handled differently than the guy who calls 38 times leaving threatening messages on the victim’s voice mail.”

## Post-Conviction Transfer

A case remains in the Pretrial Monitoring Program until it is fully adjudicated. If a defendant enters a guilty plea, the commissioner transfers the case to the regular domestic violence court session for sentencing. When PMP defendants plead or are found guilty and receive probation as a part of their sentence, their pretrial records are forwarded to their newly assigned probation agent. This prevents duplication of service referrals and creates a more fluid transition for both the offenders and the victims.

# Benefits and Challenges

## The Domestic Violence Commissioner’s Court

Prior to 2000, general intake and domestic violence courts handled most of the pretrial procedures for misdemeanor domestic violence cases in Milwaukee County. Today, practically all of these activities are handled by the DVCC, leaving regular domestic violence court dockets more time to focus on felony cases, trials, sentencing, and post-conviction compliance reviews.

One major benefit of the DVCC is that it has helped victim/witness specialists improve the quality of support they offer. “In the old days,” says Victim/Witness Specialist Strand, “we tried to have what we called ‘Pretrial Mondays,’ but the cases would still be scattered throughout the week, mixed in with trials and other hearings. You would walk into the courtroom looking for victims and there would be people everywhere and you could not tell who was who, particularly because the regular courtrooms were so big and crowded.” At the same time, the small size of the commissioner’s courtroom has been faulted with hampering the spirit of negotiations between the prosecution and defense lawyers. Defense attorney Terese Dick says she often feels “very uncomfortable discussing conditions of a plea when these negotiations can be overheard by members of the public or a defendant’s friends or family.”

The smaller space has also made it difficult for in-custody defendants to be physically present, which may help account for the session’s higher than expected rate of adjournments.<sup>21</sup> As a result, defense attorneys who are offered a plea by prosecutors typically request an adjournment so they can consult with their client. Still, the special session manages to speed cases through the system. “There may be just as many requests for adjournments as before,” explains Thachenkary, the PMP supervisor,



*Defense attorney Terese Dick often finds herself “uncomfortable discussing pleas when negotiations can be overheard by members of the public or a defendant’s friends or family.”*

<sup>20</sup> “Bail is not meant to be a sanction,” notes Commissioner Cook. It is only meant to guarantee that the defendant shows up for court. To supplement the court’s leverage over defendants who violate bail conditions, the district attorney’s office may decide to seek bail jumping or witness tampering charges or use the violation to negotiate a plea agreement.

<sup>21</sup> Because the courthouse has only one holding room to house all defendants who are transported from the jail to the fifth floor courtrooms, this limits the number of in-custody cases that can safely be in the holding area at one time. The DVCC also has a long, narrow corridor, which limits entrance and exit and has been cited as a safety concern by some, including the commissioner.

“but because the court can now schedule new court dates sooner, the cases still move faster overall.”

Financial imperatives may have also played a role in this rate. While the DVCC session was originally planned as a full-day session, to save money it was scaled back to a morning calendar only. Some feel that this has led to a more pressured environment where the focus becomes “moving cases” as opposed to having a reasonable pace to fully process the cases and hear testimony from the parties. Others disagree, however, stating that “the afternoon calendar was often light” and that having a morning-only session is “more efficient and effective.”

Another challenge is staffing. Some allege that staffing constraints in the office contribute to higher rates of adjournments. The DA’s office is only able to assign one assistant district attorney to the DVCC. Although charged with offering pleas on his or her colleagues’ cases, the individual is too busy, some believe, to negotiate beyond the colleagues’ written offers because he or she must simultaneously handle the case before the commissioner, keep records, and work out plea agreements with defense attorneys whose cases have yet to be called that morning.<sup>22</sup> As a result, defense attorneys state that this makes them more prone to seek a trial date than take a first and sometimes only offer from the prosecutor. Prosecutors, on the other hand, contend that seeking a trial date is a defense strategy to tire victims. In either case, court efficiency is ultimately affected, making this an issue that warrants ongoing attention and care when implementing similar practices.

Finally, creating the specialized session has affected outcomes by influencing key players’ knowledge of domestic violence and the court system. Commissioner Cook has credited the consolidation of domestic violence cases with improving awareness of domestic violence. He says, “Through working in a specialized session, reading the literature, and going to trainings, I have now come to recognize the classic signs of abuse. Having this experience, seeing these details, makes it easier to do this job.”

Strand praises segregating pretrial cases from regular domestic violence court sessions for delaying defendants’ and victims’ awareness of some of the shortcomings of legal interventions. “Before we had the DVCC,” she says, “pretrial defendants would observe trials and other hearings and often learn that if the victim doesn’t show up, the case will likely disappear.”<sup>23</sup> This information can reinforce a defendant’s desire to keep the victim out of court and may encourage them to use intimidation to make that happen. Learning that the case may rest squarely on their shoulders places a burden on victims as well, particularly those who feel guilty about holding their partners accountable. Strand concedes that defendants will eventually learn all this from their attorney, but she sees payoff nonetheless: “I think that having victims and defendants see this—or in this case, not see this—helps a great deal with having victims come to court and participate in the process.”

## The Pretrial Monitoring Program

Before the PMP was created, Milwaukee County had no pretrial program to address the specific complexities of intimate partner violence. There were victim/witness specialists in the district attorney’s office, but no provisions for



*Victim/Witness Specialist Jessica Strand says segregating pretrial cases can delay defendants’ and victims’ awareness of some of the shortcomings of legal interventions.*

<sup>22</sup> This is due to budget issues. The budget allows for only one assistant district attorney to be assigned to the DVCC session.

<sup>23</sup> Even though the district attorney’s office practices evidence-based prosecution, there are still cases where the only solid evidence requires victim testimony in order to proceed.

field welfare checks with victims or field monitoring and required pretrial appearances for the accused.<sup>24</sup> Moreover, then—as now—there was no simple way to reliably know if violations of the no-contact orders were occurring in domestic violence cases—no equivalent to a breathalyzer or urine screen.

Bail Monitor Joseph Wohltz believes that the role of the bail monitor has helped bridge this gap by gathering as much information as possible from as many different sources as possible. Commissioner Cook agrees that without the monitor serving as the eyes and ears of the court, it is hard for judges and commissioners to know if their court orders are being followed. “What I see now, through reports from the bail monitor and others who have contacted the victim, is that defendants are coming over to the victim’s home and doing all kinds of things in violation of bail,” he says. Recalling one such example, Wohltz described a defendant who claimed to be living in a tent as a result of the no-contact order. During a field compliance check, Wohltz discovered that the defendant was actually staying in the victim’s neighbor’s yard. “It turns out that he was living in a tree house next door,” describes Wohltz. This allowed a clear view of the victim’s house. Though the victim never appeared in court to report the situation, this intimidation was addressed in her absence.

Wohltz also believes that the bail monitor provides a useful link between the assistant district attorney, the victim/witness specialists, the court commissioner, the judges, the victims, and the defendant. “Some defendants used to be in court and there would be a warrant for them and no one would know about it. Or there would be a new offense and no one would know,” he says. “Now we’re catching these things because of the cooperative nature of the communication among us.”

While some victims object to the increased monitoring of defendants, according to Thachenkary, “those who are really frightened and who are ready to break ties with their abusers, feel safer knowing that the monitor is watching and that there is a direct link to the court if violations occur.” “My husband is very sneaky, very conniving, and very private,” said one such person. “When the bail monitor told me he visited my husband’s home, I was like ‘Whoa!’ This was the first time, finally, that I felt safe.” Commissioner Cook also believes that victims may be more likely to report violations to the bail monitor than the police. “Having a bail monitor often makes victims feel more comfortable because he’s someone they prefer talking to and he can sometimes offer a quicker response to a violation,” he explains.

Nevertheless, the hands-on approach of the bail monitor has its limits: Milwaukee County has found that a single monitor can handle only 30 active cases at one time, plus a smaller number of inactive cases.<sup>25</sup> Cook would like to have both the capacity and the criteria for participation expanded. “It would be nice to have a program where I could put in anyone I wanted,” he says. “For example, I may have guys who have been arrested 5 to 10 times, but for whatever reason they were never charged. Under the current admissions criteria [which require charges on record] these defendants don’t automatically qualify.”<sup>26</sup>



*“What I see now is that defendants are doing all kinds of things in violation of bail.”*  
— Commissioner Dennis Cook

<sup>24</sup> Victim/witness staff meet with victims who come into the district attorney’s offices. They can also make phone calls and send letters but they do not go out to a victim’s listed residence and they have no contact with the accused.

<sup>25</sup> Inactive cases are ones in which the defendant is being sought on a warrant or is being held on “in-custody” status for all or a portion of the remaining pretrial phases of the case.

<sup>26</sup> While there are exceptions to the admissions criteria when a judge or commissioner has strong concerns regarding safety, there is still a capacity issue regarding caseloads.



*The Victim and Children's Waiting Room has helped reduce the fear that many victims of domestic violence associate with coming to court.*

### **On Evaluation**

Early results from a March 2004 preliminary evaluation have shown that the majority of defendants (59.4 percent) involved in the Pretrial Monitoring Program appeared to abide by the conditions of bail. When violations occurred, they were predominately connected to no-contact orders or failure to appear for appointments with the bail monitor. Of those who violated, the DVCC increased bail in 80 percent of these cases. A smaller percentage of violations (27.5 percent) were for re-arrests for a new crime.

## **The Victim and Children's Waiting Room**

The Victim and Children's Waiting Room has helped reduce the fear that many victims of domestic violence associate with coming to court. In the past, victims would have to sit in the same public gallery of the courtroom as the defendant and the defendant's friends and family. Now they can go to the waiting room instead, and the specialist will report back to them what happened in court. If they decide to go to the courtroom when their partner's or ex-partner's case is called, or are needed to testify, the victim/witness staff can accompany them.

A random case selected by Strand illustrates these benefits: While the person accused of abusing one of her clients was appearing in the commissioner's session, the alleged victim visited the waiting room for an update on the proceedings before going upstairs to take care of some business in the restraining order clinic. "She was able to come down and find out what was happening without having to walk into the courtroom and meet the defendant or have to worry about being talked to by the defense attorney," Strand explains. "She could just go about her business and move on."

Locating the waiting room on the same floor as the domestic violence court sessions can help victims—and staff—move between court and the waiting area, but it also increases the possibility of encounters with defendants or their proxies in the corridors. Thus, security remains an important ongoing challenge. "Luckily," says Strand, "there are always a lot of deputies and law enforcement in the courthouse." To further protect victims, panic buttons and automatic one-way locks have been installed in the room, volunteers help keep it staffed, and police officers subpoenaed as witnesses to the nearby trial courts are invited to wait there until they are needed to testify.

## **Conclusion**

Addressing domestic violence within the criminal justice system presents many challenges, especially for those working on the front end of the justice system. In most of these cases, a crisis has occurred, arrests have been made, and families are in a state of flux. Yet, once this crisis reaches the legal process, the wheels of justice turn at a slower and more arduous pace. This pace leaves defendants with numerous opportunities to circumvent and undermine the process. It leaves victims with time to become fearful, guilt-ridden, and worn down, and for the facts of the case to become cold or lost. The specialized efforts of the Domestic Violence Commissioner's Court to streamline court processing, the addition of the Pretrial Monitoring Program to better ensure compliance with conditions of bail, and the creation of a secured waiting room

for victims and children represent one community's efforts to help victims and families manage this intense period between an alleged incidence of violence and the final resolution of a criminal case. To learn more about pretrial and other community practices in Milwaukee County, see the Resources section.

